

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION**

DEBRA GRAHAM, et al.,)	
)	
Plaintiffs,)	Case No. 3:08-cv-50019
)	
v.)	Judge Fredrick J. Kapala
)	Magistrate Judge Michael Mahoney
RYAN INTERNATIONAL AIRLINES, INC.)	
)	
Defendant.)	

**DEFENDANT'S CORRECTED MOTION TO DISMISS CLAIMS FIVE THROUGH
TEN OF PLAINTIFFS' FIRST AMENDED COMPLAINT**

Defendant RYAN INTERNATIONAL AIRLINES, INC. (“Defendant” or “Ryan”), through their undersigned counsel and pursuant to Federal Rule of Civil Procedure 12(b)(6), hereby respectfully move to dismiss claims five through ten of plaintiffs’ for failure to state a claim upon which relief can be granted. In support of its motion, Ryan states the following:

1. Plaintiffs Debra Graham and Kathleen Hindes have filed a ten-count first amended complaint against their former employer, Ryan, alleging claims under (1) the Family Medical Leave Act (“FMLA”) 29 U.S.C. § 2601 *et seq.* and 5 U.S.C. § 6381 *et seq.*, (First, Second, Third, and Fourth Claims), (2) the Fair Labor Standards Act, 29 U.S.C. §201 *et seq.* (“FLSA”) (Sixth and Ninth Claims), (2) the Illinois Minimum Wage Law, 820 ILCS 105/1 *et seq.* (“IMWL”) (Fifth Claim), and (3) Illinois common law. (Seventh, Eighth, and Tenth Claims). Ryan asks the Court to dismiss claims five through ten of the first amended complaint.

2. Plaintiffs’ claim under the Fair Labor Standards Act for overtime pay (Sixth Claim) fails because plaintiffs are exempt from the FLSA’s overtime provisions as employees of a “common carrier by air” under the Railway Labor Act. 45 U.S.C. § 181(2000). Likewise, plaintiffs retaliation claim (Ninth Claim) fails because, as exempt employees, their alleged

complaints of Ryan's failure to pay them overtime are not protected activity under the FLSA as a matter of law.

3. Plaintiffs' Fifth Claim under the Illinois Minimum Wage Law is preempted by the FLSA and other federal laws regulating airlines. Application of the IMWL to entitle employees of a common carrier by air to overtime pay would frustrate not only the FLSA's exemption for such workers, but also Congress's extensive regulation aimed at subjecting air carriers to uniform standards nationwide. Accordingly, the IMWL must give way to federal law, and its application here is preempted.

4. Plaintiffs' Sixth and Seventh Claims for *quantum meruit* and unjust enrichment are merely restatements of their claims for overtime pay under the FLSA and IMWL and have no independent legal basis. To the extent that Plaintiffs' *quantum meruit* and unjust enrichment survive, their collective allegations set forth in Claims Six and Seven must be stricken because plaintiffs cannot use the FLSA's collective action device to prosecute their state common law claims.

5. Finally, plaintiffs' Tenth Claim, for intentional infliction of emotional distress ("IIED"), fails as a matter of law. Hindes' IIED claim is preempted by the Illinois Human Rights Act, insofar as it is based on racial and sexual comments, and both plaintiffs' IIED claims are completely preempted by the exclusivity provision of the Illinois Workers' Compensation Act. Moreover, neither plaintiff has alleged sufficiently "extreme and outrageous" conduct to state a claim for IIED.

WHEREFORE, for the foregoing reasons and those set forth in the accompanying corrected Memorandum of Law in Support of Its Motion to Dismiss Claims Five Through Ten of

Plaintiffs' First Amended Complaint, Ryan respectfully moves this Court to dismiss claims five through ten of plaintiffs' with prejudice and award them their costs, fees, and any such other relief as the Court deems equitable and just.

Dated: May 5, 2008

Respectfully submitted,

RYAN INTERNATIONAL AIRLINES

By: /s/ Kirsten M. Evans
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was electronically filed with the Court this 5th day of May, 2008, which will send a notice of electronic filing to the following counsel of record:

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/s Kirsten M. Evans
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